

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35938

STATE OF IDAHO,)	2010 Unpublished Opinion No. 372
)	
Plaintiff-Respondent,)	Filed: March 4, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
ALAN DELAYNE HART,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order dismissing intermediate appeal, affirmed.

Alan Delayne Hart, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

PERRY, Judge Pro Tem

Alan Delayne Hart appeals from the district court's order dismissing his intermediate appeal from a judgment of conviction for inattentive driving and exceeding the registered gross weight of his vehicle. For the reasons set forth below, we affirm.

Hart was stopped when an officer observed him driving below the posted speed limit while pulling an unsecured load of what appeared to be car batteries and a large fifty-five gallon drum. Hart argued to the officer that the load was secure because it had not fallen out of the truck while he was driving. Hart further questioned the officer's authority to stop him and issue a citation. Additional officers responded with expertise in commercial loads. After weighing Hart's vehicle, it was determined to be 6,300 pounds over the maximum allowed weight of 8,000 pounds for vehicles with his registration. Hart was cited for inattentive driving, I.C. § 49-1401, as well as exceeding the registered gross weight of his vehicle, I.C. § 49-438.

Hart challenged his citations before the magistrate and, after a jury trial, was found guilty of both counts. Hart appealed to the district court, arguing various errors committed by the

magistrate. Hart also filed a motion to waive the transcript fee on appeal. The district court denied Hart's motion because it did not conform to the rules for fee waiver, was not supported by an affidavit, and did not indicate why the fee should be waived. The district court gave Hart a deadline to pay the fee or his appeal would be dismissed. The day before the deadline, Hart filed another motion to waive the transcript fee and requested a hearing. The district court granted Hart a hearing to argue his indigency and ordered him to bring evidence of his assets and liabilities. The district court further advised Hart that his failure to appear with the required documentation would result in the dismissal of his appeal. Hart attempted to continue the hearing because his wife was out of town and he did not know anything about their finances.

Hart appeared on the scheduled date and testified that he paid no rent and had no dependents or other debts. He further testified that his wife owned their house and that he had placed all of his assets into two trusts which included over 121 acres of land in Boise County as well as a number of unencumbered vehicles. Hart testified that he had no income, but indicated that his wife paid the bills. He also admitted that his wife owned five or six rental homes which earned \$850 to \$950 a month. Additionally, Hart testified that he had a bachelor's degree as an electrical technician and had sold an alarm business several years ago for \$25,000. The district court informed Hart that he had not shown indigence and gave him yet another opportunity to appear at a second hearing with his wife also present. At that second hearing, Hart appeared with \$100 in his wallet as well as two credit cards with limits of at least \$1,000. It was also shown through the testimony of Hart and his wife that Hart had cable television and internet in his home as well as four televisions. After that hearing, the district court found that Hart had failed to show that he was indigent and ordered him to pay the transcript fee or his appeal would be dismissed. When Hart failed to pay the transcript fee on the date ordered, the district court dismissed Hart's appeal. Hart again appeals.

Hart spends considerable time arguing the merits of his appeal from the magistrate. However, his appeal was dismissed by the district court on procedural grounds without reaching the merits. Therefore, we will not consider these issues for the first time on appeal. *See State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992). The proper issue raised by this appeal is whether the district court erred by denying Hart's motion for waiver of the transcript fee. The initial decision regarding the waiver of transcript fees or record costs lies with the district court pursuant to I.A.R. 24(h) and I.A.R. 27(e). The district court's decision is discretionary and is

subject to appellate review. *See State v. Hardman*, 121 Idaho 873, 875, 828 P.2d 902, 904 (Ct. App. 1992).

Hart's entire argument concerning the district court's denial of his motion for waiver of the transcript fee consists of his conclusory statement that he is indigent. In the district court's *third* order dismissing Hart's appeal for failure to pay the transcript fee, it held:

The Court finds Mr. Hart has not sustained his burden. The Court finds he is not indigent and he is not entitled to a transcript at taxpayer expense. Mr. Hart, himself, has no debt or obligations. Mr. Hart owes nothing on his credit cards and carries more than \$100 in his wallet. He and his wife enjoy rental income that pays their bills, and they own numerous vehicles and have no liens against them. Mr. Hart introduced no evidence of their monthly expenses or income. They own a recreational vehicle, again without any encumbrances. Mr. Hart's 121 acres in Boise County are debt free and are up for sale. Ms. Hart testified that they would use the proceeds from the sale of the property to repay her personal loan from her family and the equity loan against the home in which they live which has substantial equity. Mr. Hart presented no evidence that he could not get a personal loan to pay the \$630 transcript fee. Mr. Hart clearly has disposable income; he and his wife have cable television and internet. Obviously they own a computer and at least four televisions.

Hart makes no argument concerning how this holding constituted an abuse of discretion. A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996).

Hart has failed to provide sufficient argument that the district court abused its discretion by denying his motion for waiver of the transcript fee on appeal. The remainder of Hart's arguments are meritless and not properly preserved for review by this Court. Accordingly, the district court's order dismissing Hart's intermediate appeal is affirmed.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**